

STATE OF MICHIGAN  
COURT OF APPEALS

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DENNIS MILLER and TERRY ROSENBAUM,

Plaintiffs/counterdefendants-  
Appellants,

v

CONSUMERS ENERGY COMPANY,

Defendant/counterplaintiff-  
Appellee.<sup>1</sup>

UNPUBLISHED

January 24, 2006

No. 256428

Ingham Circuit Court

LC No. 04-000600-CZ

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Before: Meter, P.J., Whitbeck, C.J., and Schuette, J.

PER CURIAM.

Plaintiffs appeal as of right an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

On appeal, plaintiffs claim that the trial court improperly granted defendant's motion for summary disposition because genuine issues of material fact exist regarding whether defendant's proposed activity of replacing its existing poles and voltage lines with larger poles and higher voltage lines materially increases the burden upon the servient estate beyond the originally intended scope of the "1941 easement."

II. STANDARD OF REVIEW

This Court reviews de novo the trial court's granting of a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Review is limited to the evidence presented to the trial court at the time the motion was decided. *Peña v Ingham Co Road Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003). When deciding a

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<sup>1</sup> The counterclaim was withdrawn, and thus, the parties will be referred to as plaintiffs and defendant.

motion for summary disposition under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003). Moreover, a trial court's rulings on equitable issues, including the grant or denial of injunctive relief, are reviewed de novo. *Dyball v Lennox*, 260 Mich App 698, 703; 680 NW2d 522 (2004).

### III. ANALYSIS

The owner of an easement cannot materially increase the burden of the easement upon the servient estate or impose a new burden upon it. *Schadewald v Brule*, 225 Mich App 26, 36-37; 570 NW2d 788 (1997). The servient estate is not to be burdened to a greater extent than was contemplated at the time of the creation of the easement. *Id.* at 37. However, the rights of an easement holder are defined by the easement agreement. *Id.* at 36-37. If a proposed activity is expressly agreed to in the easement agreement, the proposed activity, as a matter of law, cannot be deemed to materially increase the burden upon the servient estate. *Great Lakes Gas Transmission Co v MacDonald*, 193 Mich App 571, 577-578; 485 NW2d 129 (1992). Furthermore, if an easement agreement is clear and unambiguous, a court may not look to extrinsic evidence to determine the parties' intent. *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003).

Here, defendant proposed to replace its existing poles and voltage lines with larger poles and higher voltage lines that could support the increased need for electricity in defendant's relevant territory. The easement agreement clearly and unambiguously expressly granted defendant the right to transmit and distribute electricity across plaintiffs' properties and to enter plaintiffs' properties to replace, improve, enlarge and maintain its poles and power lines. The easement agreement further states that "limited use of this easement by [defendant] shall not prevent [defendant] from later making use of the easement to the full extent herein authorized." Thus, we conclude that the easement agreement expressly grants defendant the right to replace its existing poles and voltage lines with larger poles and higher voltage lines. Therefore, defendant's proposed expansion cannot be deemed to materially increase the burden upon the servient estate. *MacDonald, supra* at 577-578. Thus, no genuine issues of material fact remain regarding whether defendant's proposed expansion materially increases the burden upon the servient estate, and therefore, the trial court properly granted defendant summary disposition and dismissed plaintiffs' complaint seeking to enjoin defendant from replacing its existing poles and voltage lines with larger poles and higher voltage lines. *Veenstra, supra* at 164.

Affirmed.

/s/ Patrick M. Meter  
/s/ William C. Whitbeck  
/s/ Bill Schuette